



# Regulatory Reform (Scotland) Act 2014

## 2014 asp 3

### PART 3

#### ENVIRONMENTAL REGULATION

#### CHAPTER 4

#### MISCELLANEOUS

*Offences relating to supply of carrier bags: fixed penalty notices*

**43 Offences relating to supply of carrier bags: fixed penalty notices**

- (1) The Climate Change (Scotland) Act 2009 is amended as follows.
- (2) After section 88 insert—

*“Carrier bag offences: fixed penalty notices*

**88A Offences relating to supply of carrier bags: fixed penalty notices**

- (1) A person authorised for the purpose of this section by an enforcement authority may give a person a fixed penalty notice if the person so authorised has reason to believe that the person to whom the notice is given has committed a relevant offence.
- (2) In subsection (1), “relevant offence” means an offence provided for in regulations made under section 88.
- (3) The Scottish Ministers may by regulations make further provision about fixed penalty notices under subsection (1).
- (4) Subject to section 89, the regulations may in particular include provision about—
  - (a) the enforcement authority in relation to the regulations; and
  - (b) the functions of that authority in relation to fixed penalty notices.

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(5) Schedule 1A makes further provision about fixed penalties.”.

(3) After schedule 1 insert—

“SCHEDULE 1A  
(introduced by section 88A(5))  
FIXED PENALTIES

*Preliminary*

- 1 In this schedule, unless the context otherwise requires—
- “enforcement authority” means the enforcement authority provided for in the regulations;
  - “notice” means a fixed penalty notice given under section 88A(1);
  - “the offence” means the offence to which the notice relates;
  - “prescribed” means prescribed by the regulations;
  - “the regulations” means regulations under section 88A(3).

*Content of fixed penalty notice*

- 2 (1) A notice must give reasonable particulars of the circumstances alleged to constitute the offence.
- (2) A notice must also contain the following information—
- (a) the amount of the fixed penalty;
  - (b) the payment deadline;
  - (c) the discounted amount and the discounted payment deadline;
  - (d) the name of—
    - (i) the enforcement authority to which payment should be made; or
    - (ii) a person acting on behalf of the enforcement authority to whom payment should be made;
  - (e) the address at which payment should be made; and
  - (f) the method by which payment should be made.
- (3) A notice given to a person must state that—
- (a) any liability to conviction of the offence is discharged if the person makes payment of—
    - (i) the fixed penalty before the payment deadline; or
    - (ii) the discounted amount before the discounted payment deadline;
  - (b) the payment of a fixed penalty is not a conviction nor may it be recorded as such;
  - (c) no proceedings may be commenced against the person in respect of the offence unless the payment deadline has passed and the discounted amount or fixed penalty has not been paid;

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- (d) the person has the right to make representations as mentioned in paragraph 8.

*Period in which notice can be given*

- 3 A notice may not be given after such time relating to the offence as may be prescribed.

*Amount of penalty*

- 4 (1) The amount of the fixed penalty, and the discounted amount, are such amounts as may be prescribed.
- (2) The maximum amount of the fixed penalty that may be prescribed is an amount equal to level 2 on the standard scale (within the meaning of section 225(1) of the Criminal Procedure (Scotland) Act 1995).
- (3) The discounted amount prescribed must be less than the maximum amount of the fixed penalty.

*Deadlines for payment*

- 5 (1) The payment deadline is the first working day occurring at least 28 days after the day on which the notice is given.
- (2) But the enforcement authority may extend the payment deadline in any particular case after the notice is given if it considers it appropriate to do so.
- (3) The discounted payment deadline is the first working day occurring at least 14 days after the day on which notice is given.
- (4) But the enforcement authority may extend the discounted payment deadline in any particular case after the notice is given if it considers it appropriate to do so.
- (5) On extending the payment deadline under sub-paragraph (2), or the discounted payment deadline under sub-paragraph (4), the enforcement authority must notify the recipient of the notice.
- (6) In this paragraph, “working day” means any day other than a Saturday, a Sunday, Christmas Day or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland.

*Method of payment*

- 6 The fixed penalty (and the discounted payment amount) is payable—
- (a) to the enforcement authority or the person acting on its behalf specified in the notice;
- (b) at the address specified in the notice; and
- (c) by the method specified in the notice.

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*Restriction on proceedings and effect of payment*

- 7 (1) The earliest date that proceedings for the offence may be commenced is the day after the payment deadline.
- (2) But no such proceedings may be commenced against a person if—
- (a) the person makes payment of the discounted amount on or before the discounted payment deadline (or that deadline as extended under paragraph 5(4)); or
  - (b) the person makes payment of the fixed penalty on or before the payment deadline (or that deadline as extended under paragraph 5(2)).
- (3) In proceedings for the offence, a certificate which—
- (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the enforcement authority; and
  - (b) states that payment of an amount specified in the certificate was, or was not, received by a date so specified,
- is sufficient evidence of the facts stated.
- (4) Where the enforcement authority is a local authority, the reference to a person having responsibility for the financial affairs of the enforcement authority in sub-paragraph (3)(a) is to be read as a reference to the person who has, as respects the local authority, the responsibility mentioned in section 95 of the Local Government (Scotland) Act 1973 (financial administration).

*Withdrawal of fixed penalty notice*

- 8 (1) A recipient of a notice may make representations to the enforcement authority as to why the notice ought not to have been given.
- (2) If, having considered any representations under sub-paragraph (1), the enforcement authority considers that the notice ought not to have been given, it may give to the person a notice withdrawing the notice.
- (3) Where a notice under sub-paragraph (2) is given—
- (a) the enforcement authority must repay any amount which has been paid in pursuance of the fixed penalty notice; and
  - (b) no proceedings may be commenced against the person for the offence.

*Effect of prosecution on fixed penalty notice*

- 9 Where proceedings for an offence in respect of which a notice has been given are commenced, the notice is to be treated as withdrawn.

*General and supplemental*

- 10 The regulations may make provision about—

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- (a) the application by enforcement authorities of payments received under this schedule;
  - (b) the keeping of accounts, and the preparation and publication of statements of account, in relation to such payments.
- 11 (1) The regulations may prescribe—
  - (a) the form of notices including notices under paragraph 8(2);
  - (b) the circumstances in which notices may not be given; and
  - (c) the method by which fixed penalties may be paid.
- (2) The regulations may modify sub-paragraphs (1) and (3) of paragraph 5 so as to substitute a different deadline for the deadline for the time being specified there.
- 12 The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.”.